Supreme Court, U.S.
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No. 85-1393

In The

Supreme Court of the United States

October Term, 1985

ROBERT E. BELL, PHIL PETERS, MANFORD BURRIS AND ARNOLD FELLER, INDIVIDUALLY, AND AS TAXPAYERS,
Petitioners,

vs.

CRAWFORD COUNTY, ARKANSAS; W. V. "BILL" TAYLOR, SELMA SELBY, DOYLE JOHNS, E. H. "BUSTER" PITCHFORD, C. J. NEWTON, DALE L. OWEN, THOMAS W. "BO" BUTLER, JOHN BENHAM, JOE CHAPEN, VERNON D. RUSSELL, I, AND GLEN CLUCK, JUSTICES OF THE PEACE, AND COMPRISING THE QUORUM COURT OF CRAWFORD COUNTY, ARKANSAS; GEORGE WILLMUTH, COUNTY JUDGE; FREEDA McMASTER, COUNTY TREASURER; AND HAROLD LOYD, COUNTY CLERK,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the diversion to rural residents of the proceeds of a tax levied on city residents for a specific purpose violates the constitutionally guaranteed rights of due process and equal protection under Amendment 14 of the United States Constitution.

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Respondents respectfully request the Court to deny the Petition for Writ of Certiorari sought to overturn the Opinion of the Arkansas Supreme Court in this case.

CONSTITUTIONAL PROVISIONS INVOLVED

§ 28 [County Courts-Jurisdiction-Single Judge Holding Court] The county courts shall have exclusive original jurisdiction on all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The county court shall be held by one Judge, except in cases otherwise herein provided. Ark. Const., Art. 7, § 28.

§ 3 [Power of County Judge] The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; have custody of county property; hire county employees, except those persons employed by other elected officials of the County. Ark. Const., Amend. 55, § 3.

STATEMENT OF THE CASE

The $2.5 million fund in issue [the Lease Fund] consists of advance rentals paid to Crawford County by the Lessee of the County-owned hospital. The entire Lease Fund was placed on deposit in escrow pending resolution of a U. S. Government claim against the County for re-

imbursement of Hill-Burton funds.[1] Only the interest earned on the Lease Fund was transferred to the County General Fund. Various appropriations were made from the County General Fund, including appropriations to the County Road Fund.

There was no dispute concerning the County's ownership of the hospital or the validity of the lease which generated the Lease Fund. There was no procedural challenge of the individual appropriations. No claim was made that any County official was self-dealing or engaging in any unauthorized conduct.

The Trial Court rejected the Petitioners' claim that the Lease Fund constituted an illegal exaction in violation of the Arkansas Constitution and dismissed the claim of violation of the United States Constitution for lack of proof. Except for modifications concerning a separate tax surplus fund not now at issue, the Arkansas Supreme Court affirmed the Trial Court's Decision.

REASONS FOR DENYING WRIT

I.

There is an adequate nonfederal ground to support the judgment below. Petitioners sued to enjoin elected County officials from appropriating or disbursing funds

[1] On February 18, 1986, Judgment against Crawford County was entered on this claim in the amount of $1,439,388.00 [Crawford County, Arkansas vs. Margaret Heckler, Secretary of the United States Department of Health and Human Services, United States District Court, Western District of Arkansas, Fort Smith Division, CIV-85-2092]. This decision is now on appeal.

they claimed to have resulted from an illegal exaction under the Arkansas Constitution. The Arkansas Supreme Court determined that, under its interpretation of the Arkansas Constitution, the funds did not arise as a result of an illegal exaction but rather as a result of the County's exercise of its right to own, operate and lease the County-owned hospital, a right which the State had delegated to local officials. The characterization of the Lease Fund as public funds rather than as an illegal exaction is peculiarly a matter of State law and State constitutional interpretation. No federal question is involved.

According to the Arkansas Supreme Court, the Respondents' authority over and actions regarding the Lease Fund comport with State law. Even if the Arkansas Supreme Court's determination of this issue of State law is wrong, the most that can be said of this case is that the Respondents allegedly have done something outside or in excess of the local powers delegated to them. Acting contrary to State law does not, of itself, raise the question of violation of the United States Constitution. *Owensboro Waterworks Company v. City of Owensboro,* 200 U.S. 361 [1906].

In *Owensboro*, this Court stated:

> "But, as between citizens of the same State, the Federal Court may not interfere to compel municipal corporations or other like state instrumentalities to keep within the limits of the power conferred upon them by the State, unless such interference is necessary for the protection of a Federal right. There has been no actual invasion here of any right secured by the Constitution of the United States; nothing more, taking the allegations of the bill to be true, than a failure of a municipal corporation to properly discharge the

> duties which, under the laws of the State, it owes to its people and taxpayers. And there is here no deprivation of property without due process of law within the meaning of the 14th Amendment, even if it be apprehended that the defendant City may, at some future time, impose a tax in violation of its duty under the laws of the State." 200 U.S. at 364.

The Arkansas Supreme Court's decision that the Lease Fund was a public fund to be administered by the County is an independent and adequate State ground to support the judgment; that decision should not be reviewed by this Court. *Fox Film Corp. v. Mullen*, 296 U.S. 207 [1935].

II.

Petitioners claim that the Court's use of County funds denies them equal protection guaranteed by the Fourteenth Amendment. The basis for their argument is that the State recognizes two distinct classes of County residents, residents of municipalities and rural residents, and that the municipal residents do not realize benefits from the County in direct proportion to the taxes paid by this class.[2]

Arkansas has delegated to the County the authority to manage County property, to levy local taxes and to appropriate and disburse public funds. Arkansas Constitution, Art. 7, § 28 [1874] and Amendment 55. The County has exclusive jurisdiction over County property and has the responsibility to provide services to all County resi-

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[2] The Equal Protection Clause places a limit on government by classification. *Dunn v. Blumstein*, 405 U.S. 330 [1972]. Arkansas has not established and does not recognize the classifications Petitioners claim exists, at least not in the context used by Petitioners.

dents. There is no constitutional or statutory distinction between rural or municipal property or funds within the County framework. The County provides funds to operate and maintain the County courthouse, the County court system, the County law enforcement system, the public health department, the County road system, County social services, the offices of the County officials and numerous other County functions and facilities.

Municipal taxpayers pay roughly one-half of the general taxes in Crawford County. According to the Petitioners, this entitles the municipal taxpayers to receive benefits provided by the County in direct proportion to taxes paid. It is neither possible nor necessary to calculate the value of the benefits an individual taxpayer or group of taxpayers receives by virtue of the County's expenditure of public funds for public purposes.[3] Accepting for purposes of argument the Petitioners' premise that they receive less than fifty [50%] percent of the benefits from the County's system of County roads, their conclusion that this inequality runs contrary to the Equal Protection Clause is faulty. This Court has recognized that the power to levy taxes does not depend upon the enjoyment by the taxpayer of any special benefit from the funds raised by taxation. *Nashville, C & St. L.R. Co. v. Wallace,* 288 U.S. 249 [1933]. Further, a general tax need not be apportioned among the taxpayers according to the actual services performed directly to each. *Inter-Island Steam Nav. Co. v. Hawaii,* 305 U.S. 306 [1938].

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[3] Whether, and to what extent, municipal residents benefited by virtue of County expenditures for County purposes was disputed and was the subject of extensive proof.

The Equal Protection Clause does not require absolute equality or precisely equal advantages. *Ross v. Moffitt,* 417 U.S. 600 [1974]. The Equal Protection Clause is not violated because persons are treated differently. *Griffin v. School Bd. of Prince Edward,* 377 U.S. 218 [1964]. In fact, Petitioners' position that they are entitled to an apportionment of benefits and services according to their past tax contributions would itself be a direct violation of this Court's interpretation of the Equal Protection Clause. *Shapiro v. Thompson,* 394 U.S. 618 [1969].

The Petitioners' argument is a direct frontal attack on the most fundamental principle of government—that it exists primarily to provide for the common good. *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495 [1937].

In *Carmichael,* this Court stated:

> "The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. [CITATION OMITTED] Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. A corporation cannot object to the use of the taxes which it pays for the maintenance of schools because it has no children. [CITATIONS OMITTED] *This Court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not extended for purposes which are peculiarly beneficial to him.*" [EMPHASIS ADDED] [CITATIONS OMITTED] 301 U.S. at 522, 523.

The Trial Court flatly rejected the claim that municipal taxpayers received no benefit from County expenditures or were discriminated against by virtue of the services provided by the County. In Paragraphs IV and VI of the Amended Order entered August 28, 1984, the Trial Court held:

> "That however, with regard to the Plaintiffs' original Motion and request this Court has found and does hereby find that Crawford County has presently and in the past spent funds, and has made expenditures from interest accruing upon deposits relating to hospital lease monies, for the benefit of persons living inside, as well as outside, the city limits of the municipalities of Crawford County, and for the benefit of all of the citizens, taxpayers and persons living in said County. That in this connection the testimony and evidence addresses these matters only generally and not in detail or with specificity. That further, this Court has found that these monies are and were the property of Crawford County, and by law to be managed by the lawful authorities of Crawford County, and that the actions of Crawford County in this connection had and have been according to law and within the authority and pursuant to the procedures outlined by law consummated, without timely exception or approporiate appeal." . . .
>
> "That there is no evidence or proof of Crawford County officials acting intentionally with partiality to any area or segment of its citizenry in the management of and application of all County Funds or hospital lease funds. That there is some testimony and evidence that more monies have been spent by the County on rural roads and bridges in several particular locations of the County than upon similar projects within the cities or municipalities of said County. That, however, there was no showing of lack of authority, or non-compliance with lawful requirements or procedures in the actions of the Crawford County

> Government, though opinions may well differ as to what money should be spent and where and for what purpose. That however, the authority for management of County funds and properties for the proportionate and fair benefit of all of the citizens of Crawford County lies with the County Government. That changes in policy or practice is a legislative matter subject to persuasion within the procedural processes available." Appendix "A"

Petitioners' charge of discrimination is unsupported by the evidence and has as its foundation nothing more than speculation and personal opinion that County funds could be spent for better purposes than those selected by the County officials. A claim of repugnancy to the equality clause of the Fourteenth Amendment cannot be supported by mere speculation or conjecture. *Hodge Drive-It-Yourself Co. v. Cincinnati,* 284 U.S. 335 [1932].

Petitioners' reliance upon this Court's rulings in voting cases is misplaced. The County officials to whom the State has delegated jurisdiction over County property and the appropriation of County funds are elected by voters of the entire County, urban and rural residents alike, on a one-man, one-vote basis. Neither the right to vote for County officials nor the right to hold a County office is in any way dependent upon whether one is a resident of a municipality or rural area. Many of the Respondents herein are, in fact, residents of municipalities. Municipal taxpayers who are aggrieved by what they may perceive to be unfair expenditure of County funds have unbridled access to the political system controlling County expenditures. Their constitutionally guaranteed right to protection from what they perceive to be economic discrimination is found in their right to vote for candidates whose views parallel their own, not in the Fourteenth Amendment.

III.

Crawford County's appropriation of the interest earned on the Lease Fund, and its future appropriation of the balance of the Lease Fund remaining after satisfaction of the Federal Government's judgment against the County, is challenged as being contrary to the Due Process Clause of the Fifth Amendment which prohibits the taking of private property for public use without just compensation. United States Constitution, Amendment V. There is no private property issue before this Court.

Arkansas has, under its Constitution and Statutes, delegated exclusive jurisdiction over County-owned property to County officials elected by County voters. Arkansas Constitution Art. 7, § 28 & Amendment 55, §§ 3 and 4; Ark. Stats. Ann. § 17-304 [1980 Repl.] These County officials, acting in conjunction with the County Hospital Board of Governors, have specifically been given the right to sell or lease a County-owned hospital. Ark. Stats. Ann. § 17-1501, et seq. [1980 Repl.]

The Arkansas Supreme Court ruled that the Lease Fund generated by the lease of the County's hospital did not constitute an illegal exaction in violation of Art. 16, § 13 of the Arkansas Constitution. The Arkansas Court held that the Lease Fund is a public fund generated by the County's ownership, operation and management of County property which is to be disbursed by the County through its elected officials.

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 [1980] relied upon by Petitioners to support their Due Process argument is not controlling. *Webb's* involved

the state's right, under a state statute, to interest earned on *private* funds.

Taxpayers have no vested interest in public funds in the hands of County officials. *Schenebeck v. McCrary,* 298 U.S. 36 [1936]. Neither the Fifth nor the Fourteenth Amendment regulates governments' use of public funds or public property. The Petitioners have no vested right or private proprietary interest in the Lease Fund under Arkansas law. Since public rather than private property is at issue, the Due Process Clauses of the Fifth and Fourteenth Amendments have no application to this case.

CONCLUSION

There is adequate non-federal support for the judgment of the Arkansas Supreme Court and the Petitioners fail to present a claim cognizable under the Fifth and Fourteenth Amendments to the United States Constitution. The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

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APPENDIX "A"

IN THE CHANCERY COURT OF
CRAWFORD COUNTY, ARKANSAS

No. E-83-286

ROBERT E. BELL, et al

PLAINTIFF

vs.

CRAWFORD COUNTY, ARKANSAS, et al

DEFENDANTS

AMENDED ORDER

Now on this 28th day of August, 1984, this cause comes before the Court on its own Motion to review, correct and amend its Order entered on August 17, 1984, herein, in order to correct a scrivener's error. WHEREUPON. this Court does find that said Order should be corrected by amendment and entered as follows:

I.

That this Court has jurisdiction and venue of the parties and of the subject matter herein.

II.

That this Court entered its Decree and Separate Written Opinion determining after trial all issues herein. That said Decree was entered on July 20, 1984, and filed for record on July 24, 1984. That the Plaintiffs' Motion as amended for specific findings of fact was timely filed thereafter.

III.

That it is this Court's considered opinion that the matters for which specific findings of fact are requested by the Plaintiffs in their Motion and Amended Motion were all previously addressed and indicated or found by the Court in its Decree and Opinion entered herein; and that same disposed of all issues herein with necessary and appropriate findings of fact in support of the Court's Opinion and Decree so that responding to the Plaintiffs' Amended Motion with further findings of fact is actually unnecessary in this case.

IV.

That however, with regard to the Plaintiffs' original Motion and request, this Court has found and does hereby find that Crawford County has presently and in the past spent funds, and has made expenditures from interest accruing upon deposits related to hospital lease monies, for the benefit of persons living inside, as well as outside, the city limits of the municipalities of Crawford County, and for the benefit of all of the citizens, taxpayers and persons living in said county. That in this connection the testimony and evidence addresses these matters only generally and not in detail or with specificity. That further, this Court has found that these monies are and were the property of Crawford County, and by law to be managed by the lawful authorities of Crawford County, and that the actions of Crawford County in this connection had and have been according to law and within the authority and pursuant to the procedures outlined by law consummated, without timely exception or appropriate appeal.

V.

That with regard to the Plaintiffs' Amended Motion for specific findings of fact, the matters requested have been addressed, found and determined by this Court's Decree and Opinion herein, and while further findings or comments are unnecessary, this Court does find that Crawford County did fully account without exception or prior question for the monies and properties herein concerned. That further, Crawford County has properly reported the expenditures of all county funds and all county hospital lease funds herein concerned. That further, this Court has found herein that Crawford County's actions and its trusteeship and management of such funds were as prescribed by law, authorized, and conducted by lawful procedures, and therefore proper.

VI.

That there is no evidence or proof of Crawford County officials acting intentionally with partiality to any area or segment of its citizenry in the management of and application of all county funds or hospital lease funds. That there is some testimony and evidence that more monies have been spent by the county on rural roads and bridges in several particular locations of the county than upon similar projects within the cities or municipalities of said county. That however, there was no showing of lack of authority, or non-compliance with lawful requirements or procedures in the actions of the Crawford County Government, though opinions may well differ as to what money should be spent and where and for what purpose. That however, the authority for management of county funds and properties for the proportionate and fair benefit of

all of the citizens of Crawford County lies with the County Government. That changes in policy or practice is a legislative matter subject to persuasion within the procedural processes available.

VII.

That having therefore responded to the particular request for specific findings of fact by such additional findings and comments as aforesaid, this Court does hereby confirm and reaffirm its Decree and Separate Written Opinion herein and incorporates therein by amendment or modification any additional matters set forth hereinabove as additional findings of fact responsive to the Motion as amended and requesting same by the Plaintiffs herein.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED, all as hereinabove found and set forth; and jurisdiction is continued accordingly; and the Court's Order of August 17, 1984, is hereby corrected and amended for scrivener's error.

/s/ Warren O. Kimbrough
Chancellor